

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Children's Health Defense, *et al.*,)
Petitioners,)
v.) No. 20-70297
)
Federal Communications Commission)
and United States of America,)
Respondents.)

**MOTION TO TRANSFER
AND TO DEFER FILING OF THE RECORD**

In accordance with 28 U.S.C. § 2112(a)(5), the Federal Communications Commission (FCC or Commission) moves to transfer this case to the United States Court of Appeals for the District of Columbia Circuit. Counsel for the Commission has consulted petitioners' counsel about this motion. Petitioners have indicated that they intend to oppose the motion.

Petitioners in this case seek review of an FCC order issued in December 2019: *Proposed Changes in the Commission's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields*, Resolution of Notice of Inquiry, Second Report and Order, Notice of Proposed Rulemaking, and Memorandum Opinion and Order, FCC 19-126 (released Dec. 4, 2019) (*Order*). Petitioners filed a petition for review of the *Order* in this Court on February 3, 2020. Three days earlier, on January 31, 2020, Environmental Health Trust, Consumers for Safe Cell Phones, Elizabeth Barris, and Theodora Scarato filed a petition for review of the

Order in the United States Court of Appeals for the District of Columbia Circuit.

See Environmental Health Trust, et al. v. FCC, D.C. Cir. No. 20-1025 (copy attached).

When proceedings have been instituted in two or more courts of appeals challenging the same FCC order, and when (as in this instance) the petitions for review were filed more than ten days after issuance of the order, the Commission “shall file the record in the court in which proceedings with respect to the order were first instituted.” 28 U.S.C. § 2112(a)(1). Given that the first petition for review of the *Order* was filed in the D.C. Circuit, section 2112(a)(1) requires that the Commission file the record in that forum. The D.C. Circuit has ordered that the record be filed by March 23, 2020. Clerk’s Order, Case No. 20-1025 (Feb. 5, 2020).

Section 2112(a)(5) further provides that “[a]ll courts in which proceedings are instituted with respect to the same order, other than the court in which the record is filed pursuant to this subsection, shall transfer those proceedings to the court in which the record is so filed.” 28 U.S.C. § 2112(a)(5). That statutory provision requires this Court to transfer this case to the D.C. Circuit, so that it can be consolidated with Environmental Health Trust, *et al.*’s petition for review of the same order.

The Commission also moves to defer filing of the record in this case until this Court rules on the motion to transfer.

For the foregoing reasons, the Court should grant this motion and transfer this case to the D.C. Circuit in accordance with 28 U.S.C. § 2112(a)(5).

Respectfully submitted,

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February 13, 2020

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